

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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GENERAL ELECTRIC CAPITAL CORP.,

Plaintiff,

v.

Case No. 09-C-677

OTR TRUCKING INC.,

Defendants.

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**ORDER**

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Plaintiff GE Capital Corp. brought this lawsuit alleging that OTR Trucking Inc. failed to pay sums owed on a note issued by GE Capital. It further alleged that Defendants Thomas, Scott and Gerald Ort guaranteed the note. The note was also guaranteed by Tom Ort Trucking, Inc. The guarantees provided that the guarantor was liable for attorney's fees and costs incurred by GE Capital in collecting on the note or the guarantees. (Dkt. # 17, Ex. D.)

Although much of the principal has been paid, GE Capital alleged that OTR failed to finish payment of the note. As of March 4, 2011, there is \$149,981.55 due in principal and interest. GE Capital filed a motion for summary judgment on March 10, 2011, and no response has been received within the allotted time.

The Defendants' failure to respond means that it has admitted to the state of affairs GE Capital has described in its motion. The failure to respond does not, in and of itself, guarantee victory for the moving party, because the movant must still demonstrate that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. Here, my review of the documents convinces me

that there is no genuine issue of material fact either as to the existence of liability or the amount due. GE Capital is thus entitled to judgment as a matter of law.

Accordingly, the motion for summary judgment is **GRANTED**. Judgment will be entered in favor of GE Capital Corporation and against the Defendants for the sum of \$149,981.55, plus attorney's fees, court costs and other costs incurred by Plaintiff in collecting on the note, as well as interest of \$28.41 per day after March 4, 2011.

**SO ORDERED** this 26th day of April, 2011.

s/ William C. Griesbach

William C. Griesbach  
United States District Judge